Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Biennial Regulatory Review of Regulations	)	
Administered by the Wireline Competition	)	WC Docket No. 02-313
Bureau	)	

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its comments in the above-referenced proceeding in response to the Commission's Notice of Proposed Rulemaking in WC Docket No. 02-313.[1] ALTS is the leading national trade association representing the interests of facilities-based competitive local exchange carriers ("CLECs"). ALTS member companies' primary objective is to provide facilities-based competition in the telecommunications market, including voice, broadband and other advanced telecommunications services. In this proceeding, the Commission proposes to make several changes to its rules regarding notification of network changes, when an ILEC replaces copper loops or copper subloops with FTTH loops.[2] ALTS submits comments in this proceeding to reiterate concerns it raised in comments filed in response to petitions for reconsideration of the Commission's *Triennial Review Order*.[3] Specifically, the Commission's current process for ILEC copper retirement is unfair to CLECs and does not allow these companies ample notice or time to respond. The

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[1] *In the Matter of Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, WC Docket No. 02-313, Notice of Proposed Rulemaking, FCC 03-337 (rel. January 12, 2004) ("*NPRM*").
[2] *Id.* ¶ 19-20.
[3] ALTS Opposition To Petitions For Reconsideration, WC Docket No. 01-338, 96-98, 98-147 (filed November 6, 2003).

Commission must clarify and/or modify its rules to ensure that customers do not lose existing competitive services whenever an ILEC migrates a CLEC customer onto fiber.

In its *Triennial Review Order*, the Commission gave ILECs that overbuild with fiber the option to either (1) keep the existing copper loop connected to a particular customer after deploying FTTH; or (2) in situations where the ILEC elects to retire the copper loop, to provide unbundled access to a 64 kbps transmission path over its FTTH loop.[4] However, ALTS is convinced that the Commission's rules on copper retirement and the 64 kbps capacity limitation on fiber-to-the-home overbuilds allow the ILECs too much latitude and will cause serious disruption to existing consumers of competitive services. Surely the Commission did not intend to allow ILECs to dislocate the embedded base of CLEC customers now receiving services that require more than a 64 kbps circuit. Thus, ALTS requests that the Commission make clear that the *Triennial Review Order* was not intended to deprive existing customers of their existing services.

The current network modification notification rule could give the ILECs *carte blanche* to dislocate existing CLEC customers. The ILEC need only determine that it wants to retire a copper loop, and the customer obtaining anything greater than a single POTS line is relegated to a voice channel if the customer chooses to continue its service with the CLEC. There is no end to the gamesmanship that the ILEC could play with such authority. For example, an ILEC simply has to pinpoint a valued CLEC DSL customer, notify the Commission that it intends to retire the copper loop, and, *voila*, the DSL customer loses its competitive broadband service. Similarly, when an ILEC decides to overbuild FTTH to a location where a CLEC currently provides two POTS lines to a customer, the CLEC customer would be relegated to a single POTS line. Moreover, as

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[4] *Triennial Review Order*, ¶ 277.

the notification process appears to be interpreted by ILECs, it is virtually impossible to determine which lines and which customers are, in fact, affected. Thus, the CLEC and its customer essentially have no forewarning of service discontinuance.

While ALTS believes fair competition demands that CLECs continue to have access to ILEC-deployed fiber, the Commission has chosen not to adopt that policy. However, clearly the ILECs should not be permitted to unilaterally disconnect CLEC customers with little warning. Even the High Tech Broadband Coalition proposal, which was used as the basis for the rule preserving access to existing copper, emphasized the need for CLECs to maintain access to existing non-packet loop capabilities.[5] This proposal intended to establish a copper retirement process that allowed the CLEC and regulators some leverage to negotiate fair access to the functionalities of new fiber, at least to ensure minimal disruption to existing CLEC customers. The current network modification rules allow the ILEC to essentially blindside CLECs and their customers. The ILECs have filed network modification notices with the FCC that reveal no useful information to CLECs or their customers conceivably affected by the notices of copper retirement.[6] The notices are so vague that there is no way to tell if the retirement is customer affecting. In addition, the notices are sent via ordinary mail. As a result, CLECs usually get such notice long after any 9-day window would close. The only alternative for a CLEC would be to review daily each and every network modification notification filed and guess whether one of its existing customers is implicated. The

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[5] *See id. at* fn 815, citing Letter from Derek. R. Khlopin, HTBC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338, Attach. 1 at 1 (filed Jan. 24, 2003).

[6] See, e.g., Public Notice, *Wireline Competition Bureau Network Change Notification filed by BellSouth*, Report No. NCD-839 (rel. September 29, 2003); Public Notice, *Wireline Competition Bureau Short Term Network Change Notification Filed by Qwest*, Report No. NCD-840 (rel. September 29, 2003); Public Notice, *Wireline Competition Bureau Network Change Notification Filed by SBC Communications*, Report No. NCD-835 (rel. September 29, 2003).

ILEC will undoubtedly contend that such vague notification to the Commission is sufficient to dislocate a CLEC customer, despite its lack of specific, timely notification to the CLEC and its customer that a particular line will be retired. Such power to disrupt the services obtained by a CLEC customer cannot be what the Commission envisioned by preserving only a single 64 kbps channel in fiber-to-the-home overbuilds.

The Commission's rules allow competitors and regulators virtually no say over when and how ILECs may retire copper. CLECs have at most a 9-day window to determine whether any of their existing customers are affected by an ILEC's decision to retire copper. After that point, it is entirely unclear what recourse the CLEC might have to convince the Commission to act to ensure that the consumer will continue to obtain the same service it had received over the soon-to-be-retired copper loop. Because of this, the ILEC has inordinate power to dislocate existing CLEC customers who obtain anything more than POTS.

Even where the FCC has explicitly eliminated line sharing from the national list of unbundled network elements, the FCC made sure to minimize disruption to the customers that obtain xDSL service through line shared loops and to provide a reasonable glide path to CLECs currently availing themselves of the line sharing UNE.[7] In the context of the UNE-P analysis, the Commission established a mechanism to migrate existing customers off of ILEC-provided unbundled switches that would ensure minimal disruption of existing CLEC customers.[8] The FCC found it reasonable to allow CLECs to transition their mass market customers off of unbundled switching over the course of a

[7] *Triennial Review Order* ¶ 277.
[8] *Id.* ¶ 532.

three-year period.[9] The Commission also notes in the *Triennial Review Order* that it has required transition mechanisms in other contexts in the past. Most notably in establishing a three-year interim intercarrier compensation regime for ISP-bound traffic, the Commission stated that it would be "prudent to avoid a 'flash cut' to a new compensation regime that would upset the legitimate business expectations of carriers and their customers."[10]

The Commission applied a similar approach in the case of phasing-out the line sharing UNE and in UNE-P customer migrations, but neglected to apply the same logic when considering CLEC continued access to the capabilities of the copper loop in a fiber overbuild scenario. As with line sharing and UNE-P migration, it seems entirely appropriate to fashion a similar transition mechanism to enable CLECs to migrate their existing customers to alternative arrangements and modify their business practices and operations going forward. A flash cut to a single POTS line would cause dramatic and unnecessary disruption to CLEC customers. Furthermore, the mere specter of being downgraded to a single 64 kbps channel, possibly without warning or notice, could essentially chill would-be CLEC customers from obtaining CLEC services, when the prospect of continued service is so suspect.

Surely the Commission did not intend to dislocate CLEC customers (at least existing CLEC customers) obtaining services that require anything more than a 64 kbps channel. Optimally, the Commission should modify its rule to parallel its line sharing

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[9] *Id.*, at fn 1630 ("[P]roviding a sufficiently long transition for the embedded base of customers should have the effect of encouraging competitive entry and investment in the future. Without such a transition, potential entrants might fear that investments they make in facilities, office systems, and marketing would be stranded if future unbundling decisions suddenly made their business plans no longer viable.").

[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffi*c, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9186-87, ¶¶. 77-78 (2001) *(ISP Remand Orde*r).

customer-grandfathering rule. Pursuant to such a rule, existing customers would have the ability to continue to receive the same services, or the functional equivalent, that they received prior to the ILEC's notification to retire copper. Alternatively, the Commission should establish a glide path -- perhaps a three-year transition akin to that set forth in the UNE-P customer migration discussion -- to ensure minimal disruption to existing consumers of competitive services. At a minimum, the Commission should extend the period of time during which CLECs and their customers may contest copper retirement once they receive notice from the ILEC. Furthermore, the Commission should ensure that ILECs directly inform CLECs and their customers in a clear and timely manner of which copper lines are subject to retirement. Finally, the Commission should establish a more neutral procedure to allow CLECs and customers to challenge copper retirement and to allow CLECs to negotiate fair access to fiber facilities to, at least, preserve the level of service they have been offering the dislocated customer.

The current consumers of CLEC services are the courageous, early-adopters that have recognized the benefits of differentiated competitive offerings. These customers must not be penalized for their attempts to lead the way in fulfilling the promises of the market-opening provisions of the Telecom Act. The specter of losing CLEC-provided services requiring anything more than a 64 kbps channel does nothing to instill in American consumers the faith in a competitive telecommunications future.

CONCLUSION

The current network modification notification rules drastically limit CLEC access to the functionalities of overbuilt fiber-to-the-home at the whim of the ILEC and with little or no warning to the CLEC or its customer. To ensure that CLEC customers are not unfairly denied continued access to the services they currently receive, ALTS requests that the Commission modify and/or clarify its rules to ensure CLECs have adequate time and data to respond to such notification.

Respectfully Submitted,

/s/

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